

VIRGINIA ARGUS.

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RICHMOND:—PRINTED (ON WEDNESDAYS AND SATURDAYS) BY SAMUEL PLEASANTS, JUNIOR, PRINTER TO THE COMMONWEALTH.

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SATURDAY, JUNE 20, 1807.

[12 1-2 Cents Single.]

Royster & Bohannan,
Respectfully inform their friends and the public generally, that they have just received a general assortment of
GROCERIES,
Which they will sell low for cash, country produce, or good notes at sixty days—
—AMONGST WHICH ARE—
Brown Sugar in hhd's, 10 lbs, pint and 1/2 pint
Loaf Sugar in do. do. Decanters, quart and Jamaica
Antigua } RUM
N. England } Leiper's Snuff
Best Cogniac Brandy } Window Glass
Holland Gin } London Mustard
Country do. } Rice
Madeira } Copperas
Sherry } New York Candles
Malaga & } Ginger
Dry Lisbon } Allspice
Hibbert's } Pepper
Stout and Porter } Queen's Ware in
Writing Paper } crates, assorted
Brown do. } New York Soap
Nutmegs } Imperial } TEAS
Indigo } Y. Hyson
Allum } Best Green Coffee in
Salt Petre } bags
English Gun Powder } Cotton and Wool
Shot, assorted } Cards, by the box,
assorted.

Richmond, April 1, 1807. tf

At a Court held for Cumberland county the 23d day of March, 1807.

James Morton & Company, Comp'ts

Drury Watson & John Bibb, Def'ts.

THIS day came the plaintiffs by Henry E. Watkins their attorney, and the defendant Drury Watson not having entered his appearance and given security according to an act of assembly and the rules of this court, and it appearing to the satisfaction of the court that the said Drury is not an inhabitant of this state: On the motion of the plaintiff by their counsel aforesaid, It is ordered, that the said defendant do appear here on the first day of July court next and answer the plaintiff's bill, and that a copy of this order be inserted in some newspaper published in the city of Richmond for two months successively and posted at the front door of the courthouse of this county on some court day.

A copy—Attest.

SAM. HOESON, d.c.

Buckingham County, May Term, 1807.

Daniel and Wm. Guer-

rant, vs. Thomas Ballou, admin-

istrator of Chloe Ballou, dec'd.

THE defendant not having entered his appearance, and given security according to the rules of this court, and it appearing to the court that he is not an inhabitant of this state. On the motion of the plaintiffs by their counsel, It is ordered, that unless the said defendant shall appear here on or before August term next, and answer the bill of the plaintiffs, the court will then proceed to take the same for confessed and decree the matter thereof accordingly, and that a copy of this order be forthwith published in some public newspaper of the city of Richmond for two months successively, & another copy be posted up at the front door of the courthouse of this county.

(A Copy.)

Teste, R. ELDRIDGE, jr. d.c.

(w8t*)

BUCKINGHAM COUNTY, MAY TERM, 1807.

James Gill, complainant,

vs. William H. Clayton and Clarissa his wife, and Mary Mosby Hales, an infant under the age of twenty-one years, defendants.

ON the motion of the complainant, and it appearing to the satisfaction of the court that the defendant William H. Clayton is not an inhabitant of this state: It is ordered and decreed, that unless he shall appear here on or before August court next and answer the bill of the complainant, the same will then be taken for confessed as to him, and the matter thereof decreed accordingly, and that a copy of this order be forthwith published in some newspaper of the city of Richmond for two months successively, and another copy be posted at the front door of the courthouse of this county.

A copy—Teste,

R. ELDRIDGE, Jr. d.c.

(w8t*)

To the Public.

THE Subscriber has removed to an house near the upper end of the Town on the Street leading from the Capitol square. He continues to practise law in all the Superior Courts holden in the City of Richmond, and also in the District Court of Brunswick. His Clients may rely on his utmost assiduity and attention to the business entrusted to his care.

WM. MUNFORD.

Just published & may be had at this office

Reports of Cases

ARGUED AND DETERMINED IN THE SUPREME COURT OF APPEALS OF VIRGINIA:

WITH SELECT CASES,

Relating chiefly to Points of Practice, decided by the Superior Court of Chancery for the Richmond District.

PART I. VOL. I.

By WM. W. HENING & WM. MUNFORD

Military Land for Sale.

THE subscriber wishes to sell or exchange for property in Virginia, the following tracts of Military Land, viz. one tract of ONE THOUSAND SIX HUNDRED and SIXTY-SIX ACRES, in the state of Kentucky, situated on Cumberland River, about eighty miles above the mouth of the river, about the same distance from Nashville, and twenty-five miles from Christian court house.

ONE THOUSAND ACRES in the state of Ohio, situated on the Little Miami river, and within a small distance of the Ohio.

The following tracts are all situated on Paint Creek, and within fifty miles of Chillicothe.

One tract of Five Hundred Acres, one of One Hundred and Forty, one of Eight Hundred and Ninety, one of One Hundred and Ninety-four, one of One hundred and Seventy-six.

Also one moiety of a tract of One Thousand Six Hundred and Sixty-six Acres, situated on Whiteoak Creek.

I will also dispose of a tract of One Thousand Two Hundred and Fifty Acres, in the county of Harrison, in this state, situated on the Little Kanawha. For terms apply to the subscriber, near Genito Bridge, Powhatan.

SAMUEL JONES.

Amelia, May 16, 1807. oaw2m

THE subscriber requests leave to announce to his friends and the public, that he has recommenced the arduous and difficult employment of a teacher of the Classics, Geography, History, the Belles Lettres, the principles of Natural and Moral Philosophy, Mathematics, &c. in the county of Chesterfield, at the house of Mr. James Ferguson, an instructor of great experience and capacity, with whom he has united.

Should liberal patronage be extended to the subscriber, he purposes to devote the whole of his time and attention for four or five years next ensuing to the instruction of youth; and he can with safety say, that he brings with him to the task two most powerful incentives to a vigorous exertion of his faculties, viz. a sincere desire to do ample justice to all his creditors, and a firm belief that the social and moral duties of man require of him, that he should contribute as much as he possibly can to the advancement of science, and the improvement & perfection of our common nature.

Were it deemed proper or necessary, the subscriber could easily swell this advertisement by giving a pompous development of the system he intends to pursue; but he considers himself as principally addressing those to whom he is sufficiently known; and with regard to the public generally, he must candidly inform them that he asks no other patronage than what he is determined, by useful services, fully to pay for, and if possible preserve.

The terms for board and tuition will be 120 dollars per annum, to be paid quarterly in advance, the pupils finding their own beds. The situation of the Academy is nearly equidistant from Richmond and Petersburg, and within 2 miles of the stage road leading from the one place to the other. The buildings are large & commodious, and the air and water, from long experience, have been found to be excellent.

JAMES JOHNSTONE.

Chesterfield county, 1st June, 1807. w3

Tobacco Land for Sale.

IN Amherst county, on Horsley's creek, 500 acres of rich TOBACCO LAND, formerly the property of Mr. Daniel Warwick, and known by the name of WINCANTON. This land has the advantage of lying on the main road leading from Amherst courthouse to Waugh's ferry on James river, is a valuable stand for a country store, and sufficiently large, having two rooms below and two above stairs, with a good brick chimney, and well underpinned with brick; also a lumber-house sixteen feet square, with a cellar of its full size, walled up with stone; there is also a Taylor and Saddler's shop and other out houses; likewise a tolerable good dwelling-house, with three rooms below and two above stairs, a kitchen, dairy and other out houses within a mile of the store, suitable for a private family.

This tract of land is only seven miles from Bethel, where there is an inspection of tobacco, and within eighteen miles of Lynchburg.

As it is presumed no person will be inclined to purchase without viewing the premises, they will be shown by Messrs. Taliaferros & Loving, who live within a few miles of Wincanton, and are fully empowered to make sale, and the terms of payment may be known from them, as also on application to

THOMAS GILLIAT.

Richmond, June 15th, 1807. tds

The above tract of land and improvements will be offered for sale at Amherst Courthouse on Monday the 17th day of August next (being court day) on a credit of one, two and three years if punctually paid, if not to carry interest from the day of sale.

A deed of trust will be required on the premises, or satisfactory security for punctual payment.

A FRESH SUPPLY OF

Church's Cough Drops

Is just received from the Proprietor's Dispensary New-York, and for sale at this office.

May 4th, 1807.

Sales at Auction.

ON Wednesday the 24th instant, will be SOLD, positively without reserve, about eight thousand dollars worth of fresh imported

DRY GOODS,

Consisting of Calicoes and Chintz, white and black Cambricks, ladies' fine cotton Hose, fine cotton Shirting, Irish Sheetings, Bandanna and Madras Handkerchiefs, Brown Platis, German Dowlas, Cotton Castimers, Chambray Muslins and Gingham, Furniture Calicoes, Germantown Prints, colored Cambricks, elegant worked Shawls, 6-4 Cambric and other Dimity, silk and cotton Umbrellas, &c.

A few Bales of Sannahs, Baftas & Cossas.

1 Bale of Gilla Handkerchiefs, and a variety of other articles.

Terms of sale—all sums of \$ 100 and under, cash; between \$ 100 and \$ 300, 90 days; over \$ 300, 6 months credit will be given.

Notes negotiable at the Bank with approved endorsers will be required.

DARMSDAT, FOSTER & SATELL, Auc'rs.

Richmond, 15th June, 1807. tds

NOTICE is hereby given, that on Friday the 10th of July next, WILL BE SOLD, AT PUBLIC AUCTION, the Household Furniture, Horses, Cows, Sheep and Hogs, of the estate of William McCaul, dec'd. at the plantation of the deceased, in Hanover county. Credit of six months, with bond and security for all sums exceeding ten dollars, will be given.

NOTICE is likewise given to those owing the estate to make immediate payment; and those having claims against the estate to bring them forward for settlement.

JOHN McCAUL, } Adm'rs.
EVAN FRANCIS, }

Hanover, 14th June, 1807. 3t

Ten Dollars Reward.

RUN AWAY from the Subscriber, on the 28th of April, a Negro Man JOE, and Woman named FANNY, but called by the black people FANNY KENNY, which eloped on the 11th of June. The man is a bright mulatto, about 28 years of age, straight and well built, and has a very brisk walk, and is a very handy, sensible fellow—about 5 feet, 8 or 10 inches high—The woman is so light, that hardly any person would take her to be a slave—She has blue eyes and straight sandy colored hair, and if her skin was well kept, she would be taken for a white woman—her right forefinger is off at the first joint, and has a large scar on her left arm, occasioned by a burn, and has a very brisk walk, about 20 years of age, and had on when she went away, a white Virginia Habit, and as they are Brother and Sister, it is likely they will get together, change their names, and pass as free people. Any person that will deliver them to the Subscriber, in Hanover county, or secure them in any Jail, so that I get them again, shall receive the above reward.

BENJAMIN BOWLES.

June 13, 1807.

N. B. I forewarn all owners or masters of vessels from carrying them off.

Messrs. Robert King and Charles Crough-

ton and Robert King, James Thompson

and Thomas Ravenhill, John Edie, Conrad Lamb and William Davidson, ex-

ecutors of James Short, deceased.

TAKE NOTICE.

THAT I shall, on the eighteenth day of July next, 1807, proceed to take the deposition of Howard Bennet and others, at the Tavern kept in the town of Lynchburg by Mr. Ward, between the hours of ten in the morning and sunset, to be read as evidence in two suits now depending in the Chancery Court for the Richmond District, in which I am plaintiff and you are the defendants.

ROBERT H. ROSE.

June 8th, 1807. 4w

TO BE SOLD.

For ready money, at Public Auction, on the premises, on the 10th day of July next,

The Tract of Land & Plantation,

IN the county of Henrico, whereon James Allen now resides, containing by estimation three hundred acres, be the same more or less—By virtue of a deed of trust executed by the said Allen to the subscribers to secure the payment of a sum of money therein expressed, due to Nathaniel Wilkinson, or so much thereof as shall be sufficient to discharge the debt and expense of the trust aforesaid. On the land is a genteel dwelling and other necessary out houses, with an apple and peach orchard of the choicest fruit now in high perfection. The said plantation is a desirable situation, lying on the north branch of the Brook, about eight miles from the city of Richmond. Any person wishing to purchase the said land ought to view the premises before the day of sale, which will actually take place on the above recited day, between the hours of 12 and 5 o'clock.

PETER WILKINSON, } Trustees.
WATSON PATMON, }

June 15th, 1807. tds

BY virtue of a deed of trust executed to me by William Wood of B. I., I shall proceed to sell at public sale, on the first Monday in July next, at the front door of the Tavern of Trippett T. Estes, in Charlottesville, for ready cash, TWO SLAVES, Bob and Jack, for the purposes in the deed mentioned.

JAS. BARBOUR, Trustee.

May 4th, 1807. 2

Virginia Argus.

RICHMOND:

SATURDAY, JUNE 20, 1807.

TRIAL

Col. Aaron Burr.

(Chief Justice Marshall's opinion on the motion for a writ of subpoena duces tecum to the President of the United States—concluded.)

How essentially this difference of circumstances must vary the policy of the laws of the two countries in reference to the personal dignity of the executive chief will be perceived by every person. In this respect, the first magistrate of the union may more properly be likened to the first magistrate of a state—at any rate under the former confederation;—and it is not known ever to have been doubted that the chief magistrate of a state might be served with a subpoena ad testificandum.

If in any court of the U. States, it has ever been decided that a subpoena cannot issue to the president, that decision is unknown to this court.

If upon any principle the president could be construed to stand exempt from the general provisions of the constitution, it would be because his duties as chief magistrate demand his whole time for national objects. But it is apparent that this demand is not unremitting, and if it should exist at the time when his attendance on a court is required, it would be shown on the return of the subpoena, and would rather constitute a reason for not obeying the process of the court, than a reason against its being issued. In point of fact it cannot be doubted that the people of England have the same interest in the service of the executive government, that is of the cabinet council, that the American people have in the service of the executive of the U. States, and that their duties are as arduous and as unremitting. Yet it has never been alleged that a subpoena might not be directed to them.

It cannot be denied, that to issue a subpoena to a person filling the exalted station of the chief magistrate, is a duty which would be dispensed with much more cheerfully than it would be performed; but if it be a duty the court can have no choice in the case.

If then, as is admitted by the counsel for the U. States, a subpoena may issue to the president, the accused is entitled to it of course; and whatever difference may exist with respect to the power to compel the same obedience to the process as if it had been directed to a private citizen, there exists no difference with respect to the right to obtain it. The guard furnished to this high officer to protect him from being harassed by vexatious and unnecessary subpoenas is to be looked for in the conduct of a court after those subpoenas have issued, not in any circumstance which is to precede their being issued—If in being summoned to give his personal attendance to testify, the law does not discriminate between the president and a private citizen, what foundation is there for the opinion that this difference is created by the circumstance that his testimony depends on a paper in his possession, not on facts which have come to his knowledge otherwise than by writing? The court can perceive no foundation for such an opinion. The propriety of introducing any paper into a case as testimony must depend on the character of the paper, not on the character of the person who holds it. A subpoena duces tecum then may issue to any person to whom an ordinary subpoena may issue, directing him to bring any paper of which the party praying it, has a right to avail himself as testimony, if indeed that be the necessary process for obtaining the view of such paper.

When this subject was suddenly introduced, the court felt some doubt concerning the propriety of directing a subpoena to the chief magistrate, and some doubt also concerning the propriety of directing any paper in his possession, not public in its nature, to be exhibited in court. The impression that the questions which might arise in consequence of such process were more proper for discussion on the return of the process, than on its issuing was then strong on the mind of the judges, but the circumstance with which they would take any step which would in any manner relate to that high personage, prevented their yielding readily to those impressions; and induced the request that those points if not admitted, might be argued. The result of that argument is a confirmation of the impression originally entertained. The court can perceive no legal objection to issuing a subpoena duces tecum to any person whatever, provided the case be such as to justify the process. This is said to be a motion to the dis-

cretion of the court. This is true. But a motion to its discretion, is a motion not to its inclination, but to its judgment, and its judgment is to be guided by sound legal principles.

A subpoena duces tecum, varies from an ordinary subpoena only in this, that a witness is summoned for the purpose of bringing with him a paper in his custody. In some of our sister states whose system of jurisprudence is erected on the same foundation with our own, this process, we learn, issues of course. In this state it issues not absolutely of course, but with leave of the court. No case, however, exists, as is believed, in which the motion has been founded, on an affidavit, in which it has been denied, or in which it has been opposed. It has been truly observed, that the opposite party can regularly take no more interest in the awarding a subpoena duces tecum, than in the awarding an ordinary subpoena. In either case he may object to any delay, the grant of which, may be implied in granting the subpoena, but he can no more object regularly to the legal means of obtaining testimony, which exists in the mind, than in the papers of the person who may be summoned. If no inconvenience can be sustained by the opposite party, he can only oppose the motion in the character of an amicus curiae, to prevent the court from making an improper order, or from burdening some officer by compelling an unnecessary attendance. This court would certainly be unwilling to say that upon fair construction the constitutional and legal right to obtain its process to compel the attendance of witnesses, does not extend to their bringing with them such papers as may be material in the defence. The literal distinction which exists between the cases, is too much attenuated to be countenanced in the tribunals of a just and humane nation. If then, the subpoena be used without enquiry into the manner of its application, it would seem to trench on the privileges which the constitution extends to the accused; it would seem to reduce his means of defence, within narrower limits than is designed by the fundamental law of our country; if an overstrained rigor should be used with respect to his right, to apply for papers deemed by himself to be material. In the one case the accused is made the absolute Judge of the testimony to be summoned; if in the other, he is not to judge absolutely for himself, his judgment ought to be controlled only so far as its apparent that he means to exercise his privileges not really in his own defence, but for purposes which the court ought to discountenance. The court would not lend its aid to motions obviously designed to manifest disrespect to the government, but the court has no right to refuse its aid to motions for papers to which the accused may be entitled and which may be material in his defence.

These observations are made to show the nature of the discretion which may be exercised. If it is apparent that the papers are irrelevant to the case, or that for state reasons, they cannot be introduced into the defence; the subpoena duces tecum would be useless; but if this is not apparent; if they may be important in the defence; if they may be safely read at the trial; would it not be a blot in the page which records the judicial proceedings of this country, if in a case of such serious import as this, the accused should be denied the use of them?

The counsel for the United States take a very different view of this subject, and insist that a motion for process to obtain testimony, should be supported by the same full and explicit proof of the nature and application of that testimony, which would be required on a motion which would delay public justice;—which would arrest the ordinary course of proceeding, or which would in any other manner affect the rights of the opposite party. In favor of this position, has been urged the opinion of one, whose loss as a friend, & as a judge I sincerely deplore; whose worth I feel, whose authority I shall at all times greatly respect. If his opinion was really opposed to mine, I should certainly revise, deliberately revise the judgment I had formed: But I perceive no such opposition.

In the trials of Smith and Ogden, the court in which Judge Patterson resided, required a special affidavit in support of a motion made by the counsel for the accused for a continuance and for an attachment against witnesses who had been summoned and had failed to attend.

Had this requisition of a special affidavit been made as well as a foundation for an attachment, as for a continuance, the cases would not have been parallel; because the attachment was considered by the counsel for the prosecution merely as a means of punishing the contempt, and a court might certainly require stronger testimony to induce them to punish a contempt, than would be required to lead its aid to a party in order to procure evidence